IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

THURSDAY, THE 23RD NOVEMBER 2006 / 2ND AGRAHAYANA 1928

WP(C).No. 29093 of 2006(L)

PETITIONER:

M.K. SIVARAJAN, FORMERLY PRESIDENT
EDVANAKKAD GRAMA PANCHAYATH,
MULLUVATHUKKATHARA, EDAVANAKKAD,
PIN-682 502.

BY ADV. SRI.KKM.SHERIF
SRI.T.K.SAIDALIKUTTY
SRI.P.M.KUNJIMOIDEENKUTTY
SRI.LAL K.JOSEPH
SRI.A.A.ZIYAD RAHMAN

RESPONDENTS:

1.THE STATE ELECTION COMMISSION
THIRUVANANTHAPURAM.

2.THE VYPEEN BLOCK PANCHAYATH
SECRETARY, KUZHUPPALLY.

3.V.K. IQUABL, MEMBER,
EDAVNAKKAD PANCHAYTH, VADAKKANCHERRY HOUSE,
EDAVANAKKAD.

R1-R2 BY ADV. SRI.MURALI PURUSHOTHAMAN
R3 BY SRI.K.I.ABDUL RASHEED
SMT.K.N.VIGY

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 23/11/2006,THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

PIUS C. KURIAKOSE,J.

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W.P.(C)No.29093 of 2006

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Dated: 23rd November, 2006

JUDGMENT

The former President of the Edvanakkad Grama Panchayat who was voted out of power on the basis of a no-confidence motion has filed this writ petition under Article 226 of the Constitution seeking to quash all proceedings in furtherance to the no-confidence motion. The State Election Commission is the first respondent, the Vypeen Block Panchayat Secretary, the officer authorised by the Election Commission under Section 157(2) of the Kerala Panchayat Raj Act for receiving the notice of intention to move the no-confidence motion is the second respondent and Mr.V.K.Iqubal, a member of the Panchayat who propose the motion is the third respondent. Ext.P1 is copy of the no-confidence motion and Ext.P1(a) is copy of notice of intention to move the motion. The petitioner points out that signatory numbers 2,6 and 7 in Ext.P1 belonged to the Democratic Indira Congress(Karunakaran). The petitioner relies on Ext.P2 resolution dated 24.9.2006 to say that these three persons volountarily resigned from DIC(K) party and joined Indian National Congress(I). The petitioner has produced Exts.P3 and P3(a) copies of excerpts of news items in Malayala Manorama and Mathrubhumi daily respectively to reiterate the contention that these three persons have

volountarily give up membership from the DIC(K) for joining the Indian National Congress(I). The point which is prominently raised in the writ petition is that though the 2nd respondent is the authorised officer of the Election Commission as per Section 157(2) for accepting the written notice and the no-confidence motion, the written notice of intention and copy of the motion was accepted by the Extension Officer (Housing) of Vypin Block. Ext.P4 receipt for Exts.P1 and P1(a) is produced in this regard. The petitioner claims that this irregularity was brought to the notice of the 2nd respondent immediately and that subsequently Ext.P5 petition dated 16.10.2006 was also given to the 1st respondent-Election Commission. The Extension Officer is a person by name K.K.Unus. K.K.Unus was not the Secretary of the Block Panchayat, the only authorised officer. Still Ext.P1 series was accepted by K.K.Unus on 3.10.2006 signing on behalf of the B.D.O. who is the Secretary of the Block Panchayat. The petitioner alleges that after the irregularity was brought to the notice of the authorised officer on 4.10.2006, a record was made regarding handing over of the B.D.O.'s charge to K.K.Unus. The first respondent-Election Commission was informed that the authorised officer is not empowered to delegate the powers conferred on him and therefore

the no-confidence motion and all proceedings thereon is vitiated by illegality. In Ext.P5 a prayer was made that all proceedings on the basis of the no-confidece motion be stayed. Ignoring the glaring irregularity, the 2nd respondent issued Ext.P6 notice regarding the convening of a meeting for consideration of the no-confidence motion on 18.10.2006. The petitioner raised his objection to Ext.P6 also but the objections were ignored. The petitioner relies on Ext.P7 excerpts of Malayala Manorama Daily dated 19.10.2006 in this regard. The petitioner also relies on the register maintained under Rule 3(2) of the Kerala Local Authorities (disqualification of defected members) Rules, 2000 to show that the three members mentioned by him belonged to the D.I.C.(K). It is pointed out that in the Panchayat Committee, the C.P.I.(M) has got six members, D.I.C.(K)-3 and the Indian National Congress 5. The petitioner was elected as President of the Grama Panchayat with the support of D.I.C.(K). One Anandavally Chellappan who belonged to D.I.C.(K) was elected as Vice President with the support of C.P.I.(M). The petitioner then states that the District President in-charge of D.I.C.(K) has issued a whip to the D.I.C.(K) members Smt.Anandavally Chellappan, K.R.Sunil Kumar and V.B.Mujeeb Rahman to vote against the no-confidence motion.

But the whip was ignored and these three D.I.C.(K) members supported the motion which was accordingly carried by 8 votes against 6 votes. Ext.P9 is copy of the record relating to the voting pattern on the no-confidence motion. The petitioner contends that the three former D.I.C.(K) members have become disqualified on the ground of defection and a petition is already submitted before the 1st respondent under Section 4(1) of the Kerala Local Authorities (Prohibition of Defection)Act read with Rule 4A of the Rules. The petition is pending as O.P.No.54 of 2006. Contending that the constitutional functionary, the Election Commission has authorised the 2nd respondent alone to carry on his responsibilities under Section 157 and that the 2nd respondent is not at all entitled to authorise any of its subordinates for discharging the functions for which he has been authorised by the 1st respondent, the petitioner has filed this writ petition raising as many as five grounds.

2. A detailed counter affidavit has been filed by the 2nd respondent. Ext.R2(a) produced along with counter affidavit is copy of the order issued by the State Election Commission authorising the Secretary of the Block Panchayat within whose jurisdiction the Grama Panchayat is situated as the authorised officer for receiving notice of

intention to move no-confidence motion. It is pointed out that the Panchayat Secretary is also by virtue of his office Block Development Officer. The incumbent in the office of the 2nd respondent during the relevant period was one M.A.Yacob. But on 3.10.2006 for personal reasons Yacob proceeded on casual leave. The leave application was submitted by the Assistant Development Commissioner(General), Ernakulam. Before proceeding on leave Yacob issued Ext.R2(b) Office Order No.6/2006 giving charge of day to day affairs of his officer to Extension Officer (Housing). The Extension Officer (Housing) was one K.K.Unus. Unus was holding at the relevant time the charge of the Joint B.D.O. also. On 3.10.2006 at 2 P.M. the third respondent and three other members of the Panchayat came to the office of the 2nd respondent for delivering a notice of intention to move a no-confidence motion (Ext.P1(a)) against the writ petition who was the then President of the Panchayat. Being the officer holding the charge of the 2nd respondent, Unus received the notice in exercise of powers under Section 157(2) and receipt was issued. But on 4.10.2006 Yacob cancelled the unavailed portion of the leave and reassumed the office of the B.D.O. cum Secretary, Block Panchayat. After reassuming charge, only Yacob took further steps pursuant to

Exts.P1 and P1(a) and issued notice under Section 157(3) of the meeting convened for consideration of the motion. The notice was served on all members of the Panchayat by registered post. The meeting was held as scheduled. The motion was tabled and debated. The motion was ultimately carried by 8 votes in favour and 6 vodes against. Ext.R2(c) is copy of the minutes of the meeting in which the motion of no-confidence was carried. The counter affidavit then refers to sub-section 12 of Section 157 and points out that the writ petitioner has ceased to hold the office of the President of the Panchayat, the moment the motion was declared as carried. The necessary records have already been forwarded to the State Election Commission and the Government. The vacancy in the office of the President of the Panchayat has also been reported to these authorities. Since by virtue of Sri.Unus holding charge of the Secretary of the Block Panchayat at the time when he was receiving Ext.P1(a) notice, there is no illegality in Sri.Unus having accepted the notice and for convening of the meeting on the basis of the notice so accepted by Sri.Unus.

3. As a point of preliminary objection, it is contended that the writ petitioner who participated in the deliberations and also in the

voting at the meeting which considered the motion of no-confidence is not entitled to challenge the motion which has been carried against him. The counter affidavit then specifically points out that the principle of 'delegatus non-protest delegare' has no application at all in this case. Sri.Unus himself was the authorised officer at the time when he received the office by virtue of him holdeing charge of the Block Panchayat Secretary. The allegation that records have been manipulated as regards handing over of charge is false. The first ever complaint made by the petitioner or by any other member on the subject was on 16.10.2006. This was just two days before the meeting. No complaint was ever raised by the authorised officer. Even at the time of deliberations on the motion, the issue was never raised. The issue was not even raised before the Election Commission during the hearing of an interlocutory application in O.P.No.54 of 2006 in respect of the question regarding disqualification of the three members referred to in paragraph 8 of the writ petition. In W.P.C.No.28528/2006 instituted before this court regarding the defection issue also, this issue is not seen raised. The Writ Petition is filed 19 days after the motion was carried. The Writ Petition is without any bona fides. The counter affidavit concludes by highlighting that in

a democratic set up where the right to an office depends on the will of the people, a person like the petitioner who has lost majority cannot be permitted to hold the office at all.

4. The 3rd respondent has also filed a counter affidavit. It is contended therein that the Writ Petition has been filed only when all the efforts of the petitioner for defeating the no-confidence motion by use of force and money power failed and the petitioner was voted out of office. It is pointed out that in the wake of threats from the petitioner and supporters, the members of the opposition had to approach this Court, thanks to whose directions only the deliberations on the no-confidence motion took place under thorough police surveillance. In spite of the order of this Court, the petitioner did try to obstruct the proceedings by stating a march to the office of the Panchayat. It is stated that the political equations in the Edavanakkad Grama Panchayat which has a strength of 14 seats were that the CPI(M) led LDF got six seats, Congress led UDF got five seats and the Democratic Indira Congress (K) got three seats. The DIC(K) had contested the election without any coalition but in the election to the office of the President, the petitioner got elected with the support of the DIC(K). The administration of the Panchayat

under the leadership of the petitioner was found to be a total failure within one year. Projects like Aiswarya, Kudumbasree etc. introduced by the Government, very useful to the general public implemented elsewhere in the State, were not implemented in Edavanakkad Panchayat on time. As for the implementation of Kudumbasree project, the same was politicised in the Panchayat to a very great extent, as a result of which the project itself became non-functional. The petitioner lost the confidence of the majority of the Councillors because of the administrative lapses and on account of certain political changes which had come to happen in the meanwhile. Ext.P1 notice was submitted by 8 Councillors and Ext.P1(a) notice came to be issued by the 2nd respondent under Section 157(2) of the Kerala Panchayat Raj Act, 1994.

5. Ext.R3(a) produced along with the counter affidavit is the notification issued by the Election Commission under which the Secretaries of the concerned Block Panchayats have been authorised to receive notices of no-confidence motion. In view of Ext.R3(a), the 3rd respondent went over to the office of the 2nd respondent on 3.10.2006 for giving intimation regarding the intention to move no-confidence motion against the writ petitioner. The 3rd respondent

however was informed that the Secretary of the Vypin Block Panchayat was on leave and that charge of his office is given to the Extension Officer (Housing), one Sri.K.K.Unus and also that Sri.Unus is holding the charge of Vypin Block Panchayat. It was accordingly that Exts.P1 and P1(a) were submitted to the said officer who was fully authorised and qualified to accept the same. The counter affidavit denies the allegation in the Writ Petition regarding respondents 2, 6 and 7, three of the signatories to Ext.P1, that they voluntarily resigned from DIC(K) and joined the Indian National Congress(I). According to the deponent, he is the President of Indian National Congress (I) Edavanakkad Mandalam Committee and he has not given membership to those three persons. The counter affidavit relies on the Madhyamam news item Ext.R3(b) which is to the effect that these three members who constituted the Parliamentary Committee of the DIC(K) have decided to give support to the UDF. The counter affidavit then points out that the writ petitioner had no complaint regarding the procedure till the motion was carried. The petitioner never raised any voice against the procedural defects before any authorities. The petitioner is somebody who actively participated in the deliberations on the no-confidence motion. Later,

he cast his vote against the same. He is estopped from raising allegations after he was defeated and ousted from the office of the President. It is pointed out that Ext.P7 is dated 19.10.2006 which is the day after the no-confidence motion was carried. The submission that the District President in-charge DIC(K) has issued written instructions to DIC(K) members to vote against the no-confidence motion is also denied and it is contended that the so-called District President in charge of the DIC(K) had no authority to issue any such direction. As regards O.P.54 of 2006 pending before the 1st respondent, it is pointed out that the writ petitioner is not the petitioner in that O.P. The maxim "delegatus non protest delegare" has no application or relevance in the present case. The counter affidavit concludes by pointing out that the attempt of the petitioner has always been to see that the administration of the Panchayat is not carried out in a smooth and peaceful manner. Even after vacating the office, the petitioner is not permitting the carrying out of administration by the Vice President and the other functionaries of the Panchayat. Ext.R3(c) minutes of the Committee meeting held on 30.10.2006 is also relied on in this context. Ext.R3(c) will show that on account of a pandemonium instigated by the petitioner and

his men, the meeting had to be called off.

6. I have heard the submissions of Sri.K.K.M.Sheriff, learned counsel for the petitioner and those of Sri.Murali Purushothaman, learned Standing Counsel for the Election Commission and also those of Sri.K.I.Abdul Rasheed, learned counsel for the 3rd respondent.

7. Mr.Sheriff would refer to Section 157 of the Kerala Panchayat Raj Act, Article 243K of the Constitution of India, Appendix VII of Rule III of Part I of the K.S.R. Learned counsel who made submissions on the basis of the pleadings and the documents placed on record by the petitioner, would refer in particular to Exts.R2(a), R2(b), Exts.P5 and P7. He would try to fortify his submissions by referring to the judgment of this Court in **Retnamma Raveendran v. State Election Commission, Trivandrum** (AIR 2000 Kerala 337), **Sharafudeen v. Registrar, University of Kerala** (1997(1) KLT 257) and **A.K.Roy v. State of Punjab** [(1986) 4 SCC 326].

8. Mr.Murali Purushothaman on his part would place strong reliance on the judgment of a learned Single Judge of this Court in O.P.2436 of 2002 and submit by way of preliminary objection that the writ petitioner who participated in the deliberations on the no-confidence motion is not entitled to challenge the proceedings after

he was defeated on the floor of the Council. He would rely on the judgment of the Allahabad High Court in **Ram Das v. Badan Singh** (AIR 1994 Allahabad 328) and of this Court in **Kuttappan v. State of Kerala** (2002 (3) KLT 57), **Retnamma Raveendran v. State Election Commission, Trivandrum** (AIR 2000 Kerala 337). He would refer to many of the documents, particularly Ext.R2(c) minutes.

9. Mr.K.I.Abdul Rasheed, counsel for the 3rd respondent, while supporting all the submissions of Mr.Murali Purushothaman, would highlight the non-implementation of beneficial projects during the tenure of the petitioner as President as well as the obstructive tactics repeatedly employed by the writ petitioner to jeopardise the Panchayat administration even after he was voted out of power. Counsel would place strong reliance on the judgment of the Supreme Court in **M/s.Beopar Sahayak (P) Ltd. v. Vishwa Nath** (AIR 1987 SC 2111).

10. Having considered the rival submissions addressed before me in the background of the pleaded case and in the light of the relevant statutory provisions and judicial precedents cited at the Bar, I am of the view that there is no justification for invoking the powers

of judicial review so as to interfere with the proceedings pertaining to and pursuant to Ext.P1. Ext.R2(a) is the notification issued by the State Election Commission under Section 157(2) of the Panchayat Raj Act authorising Secretary of the Block Panchyat as the officer to receive notices of intention of no-confidence motion against Presidents or Vice Presidents of Panchayats, as the case may be. As will be clearly seen from Ext.R2(a), Mr.Yacob, the then incumbent in the office of the Secretary, Vypin Block Panchayat/B.D.O. had been authorised to receive notices to move no-confidence motions by virtue of his office and not as a persona designata. In other words, going by Ext.R2(a), every officer who for the time being is discharging the powers and duties of the Secretary of the concerned block panchayat will be authorised under Ext.R2(a) to receive notices of intention to move no-confidence motions. The maxim delegatus non-protest delegare, in my view, does not apply in the present case since the person who is authorised under Ext.R2(a) is the Secretary, Block Panchayat/B.D.O. and also since Sri.K.K.Unus, the actual recipient of Exts.P1 and P1(a) was at the relevant time entrusted with the office of the Secretary, Block Panchayat.

11. Noticing the contention raised in the Writ Petition that the

record relating to handing over of charge to Mr.Unus by the 2nd respondent was made only after the apparent irregularity of Exts.P1 and P1(a) being received by Mr.Unus was brought to the notice of the 2nd respondent, I directed the 2nd respondent to produce the relevant register for my perusal. The same was produced and significantly Sri.Sheriff would give up his argument that Ext.R2(b) is a concoction. In fact Mr.Sheriff was not able to point out anything about that register which would indicate any irregularity in the entries therein.

12. I am not much impressed by the argument addressed by Sri.Sheriff on the basis of Rule 3 of Appendix-VII that it is not necessary for an officer going on casual leave to hand over charge to anybody else. Having regard to the nature of the responsibilities attached to the post of Secretary, Block Panchayat, the conduct of the 2nd respondent in handing over charge to Sri.K.K.Unus should be found to be in order. The judgment of this Court in **Retnamma Raveendran** (supra) was rendered in a different context. Prior to the amendment of Section 157(2) by Act 13 of 1999, the power to nominate officers to receive notice of no-confidence motion and to preside over meetings was with the Government. It was only with effect from 18.1.2000 that by virtue of the amendment, the Election

Commission was conferred with the power to authorise such officers. In Retnamma's case, in spite of the conferment of powers on the Election Commission, the Deputy Director of Panchayats was the officer authorised by the Government and not the Election Commission received notice and the same was rightly found to be totally irregular by this Court. The facts of the case on hand are entirely different. In this case, Sri.K.K.Unus received the notice in his capacity as the officer holding charge of the office of the Secretary, Block Panchayat who is authorised under Ext.R2(a) issued by the Election Commission itself. As noticed by the Supreme Court in **M/s.Beopar Sahayak (P) Ltd. v. Vishwa Nath** (AIR 1987 SC 2111), the principle of de facto doctrine can be applied in this case, especially since the authorisations under Ext.R2(a) are not on any individuals as persona designata but only by virtue of their office.

13. What is most important in democracy is the will of the majority. The writ petitioner appears to have been optimistic in spite of Exts.P1 and P1(a) that he will be able to defeat the no-confidence motion. There is no material to accept his argument that he brought the irregularity of Mr.Unus receiving the notice to the 2nd respondent himself on time. The first ever complaint by anybody on the subject

was just two days prior to the meeting before the State Election Commission. Even the filing of the Writ Petition is long after the no-confidence motion was carried. The following passages in the judgment of the Division Bench of the Allahabad High Court in **Ram Das v. Badan Singh** (AIR 1994 Allahabad 328) are significant:-

> "13. It has not been disputed that including the petitioner there are 12 members of the Gaon Panchayat. In the meeting in which the motion of no-confidence was considered, except Badan Singh Up-Pradhan all the 11 members voted in favour of the motion of no confidence. This Court in exercise of the extraordinary jurisdiction under Article 226 of the Constitution will not interfere when the motion of no confidence has been carried out by overwhelming majority. This Court in the case of Om Prakash Yadav (supra) has held:-
>
> > "..... Even if orders are not in accordance with law and suffers from infirmity this Court can decline to exercise its discretionary power under Art.226 of the Constitution of India, if it considers that in view of the

> facts and circumstances of the case no interference is called for. As mentioned above, the motion of no confidence has been passed against the petitioner by overwhelming majority and interference by this Court against such a resolution will amount to restoring office to a person against the will of the majority of the people. In a democratic set up where right to an office depends on the will of the people a person who has lost majority cannot be permitted to hold the office, we are accordingly of the opinion that it is not a fit case to interfere under Article 226 of the Constitution of India."

I am in agreement with the above principles enunciated by the learned Division Bench of the Allahabad High Court. All said and done the petitioner is a person who no longer enjoys the support of the majority of members in the Panchayat Council. He cannot be allowed to cling on to power by adhering to technicalities.

14. The preliminary objection raised by Mr.Murali Purushothaman regarding the maintainability of the Writ Petition has considerable support from the judgment of this Court in O.P.No.2436 of 2002. The petitioner participated in the deliberations and

answered all the allegations levelled against him by the supporters of the motion and even voted in the proceedings against the motion. Nevertheless, he was unsuccessful. He cannot now turn round and challenge the validity of the notice itself. At any rate, I do not find any justification for invoking the extraordinary jurisdiction of this Court under Article 226 of the Constitution of India to interfere with the proceedings pursuant to Ext.P1.

The Writ Petition will stand dismissed. The parties however will bear their respective costs.

(PIUS C. KURIAKOSE, JUDGE)

srd/tgl